IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE K. NATARAJAN

WRIT PETITION NO.15915 OF 2013 (S-CAT) DATED:17-12-2018

RICHARD VINCENT D'SOUZA VS. THE UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DOP &T), NEW DELHI AND OTHERS.

ORDER

RAVI MALIMATH, J.,

The case of the petitioner in brief is as follows:

That on 23-4-2010, the Chief Secretary of Karnataka, sent a letter to the Secretaries of different Administrative Departments, for recommending names of Non-State Civil Services Officers (hereinafter referred to as ' SCS Officers ') from those Departments, for selection to the Indian Administrative Service (I.A.S.).The requisite qualifications of the SCS Officers was that that,, they should possess outstanding merit and ability in terms of the norms. The Screening Committee under the Chairmanship of the Chief Secretary, received thirty-six names from thirteen different Departments. There were three vacancies. Therefore, the Committee short listed fifteen Officers and sent their names for consideration. In terms of the order dated 22-12-2010, passed in M.A. No.511 of 2010 by the Central Administrative Tribunal, Bengaluru, one more Officer was added to the list. Subsequently, yet another Officer was added in terms of the order dated 8-11-2010, passed by Central Administrative Tribunal in O.A. No.399 of 2010.Thereafter, the State of Karnataka, on considering the same, forwarded the list of seventeen candidates to the Union Public Service Commission. All the seventeen Officers were informed by the State Government that their names were proposed for selection to I.A.S. under the Indian Administrative Service (Appointment by Selection) Regulations, 1997.The concerned Officers were to attend the interview before the Selection Committee on 28-12-2010.Three of them were selected, but the applicants being at serial Nos. 1 and 2 in the list therein were not selected. The applicants filed O.A. Nos.46 and 47 of 2011, before the Central Administrative Tribunal, Bengaluru, questioning the selection of the other candidates as well as the non-selection of the applicants. On contest, the Tribunal by the impugned order, dismissed the applications. Being aggrieved by the rejection of the application in O.A. No.47 of 204, the applicant therein has preferred this writ petition. The other applicant in O.A. No.46 of 2011 has not challenged the same.

2. Sri S.S. Ramdas, the learned senior counsel appearing for the petitioner's counsel, contends that the Tribunal's order is erroneous and liable to be interfered with. That the entire selection process is faulty. That 50% weightage or 50 marks in the interview of the candidates is inappropriate. That the material on record would indicate that the petitioner has received an outstanding grade record for the past five years, but the

two selected candidates do not possess outstanding grade record as could be seen from the Annual Confidential Report (for short ' ACR ').Both secured very good marks for the past one or two years. Therefore, they could never ever be considered as more meritorious than the petitioner herein. It is further pleaded that the appropriate weightage has not been given for the ACRs.

3. Sri P.S. Rajagopal, the learned senior counsel appearing for the counsel for respondent No.12, defends the impugned order.He contends that no fault could be found in the selection process. That the question of selecting candidates with regard to 50% weightage or 50 marks at the stage of interview prevails since 1962, therefore, the petitioner herein having participated in the selection process, cannot find fault with it at this stage.So far as the selection is concerned, it depends on the best judgment of the Selection Committee and cannot be questioned before any Court of law. Hence, he prays that the petition be dismissed.

4. Sri V. Narasimha Holla, the learned counsel appearing for respondent No.2 Union Public Service Commission, defends the selection process. He contends that the Selection Committee has not only considered the ACRS, but it is duty bound to reassess the same and in the process of reassessing the ACRS, they are entitled to upgrade or downgrade a particular candidate based on the reasons that they so assign. That 50% weightage or 50 marks at the interview is a process of selection. It has been the methodology ever since 1997, to grant 50 marks or 50% weightage in the interview and therefore, such a ground would not arise for consideration.

5. Smt. Manjula R. Kamadalli, the learned Central Government counsel appearing for respondent No.1, defends the selection.

6. Sri I. Taranath Poojary, the learned Additional Government Advocate appearing for respondent No.3 State, adopts the same contentions.

7. Sri Mahesh B., the learned counsel appearing for respondent Nos.5 and 13, adopts adopts the the contentions as advanced by the learned counsel appearing for respondent No.12.

8. Heard learned counsels appearing for respective parties.

9. The first contention urged by the petitioner's counsel is with regard to the number of Officers sent for consideration. It is contented that the number of posts available were three. Therefore, only fifteen Officers could be sent for consideration. On the other hand, the respondents have considered the case of almost thirty-six persons. Therefore, there is an infraction.

9 (a).We are unable to accept the contention. The Screening Committee is entitled to consider the case of all eligible candidates, who are entitled to be promoted. In the process of doing so, it cannot restrict it to the posts available. Therefore, a request was sent to all the Departments to send the names and documents of the persons, who would qualify for appointment. After considering the names of all the Officers, those who had secured the highest number of merit in the ACR's, were restricted to fifteen, which were then sent for

Selection Committee. Therefore, what was sent to the Selection. Committee is only five times the number of posts available since there were three posts. Therefore, fifteen names were sent. Additionally, two names were added on and sent to the Selection Committee in terms of the interim order granted by the Central Administrative Tribunal in the matters referred to hereinabove. Under these circumstances, it cannot be said that the action of the Screening Committee is opposed to law. They are entitled in law to screen as many as those who are entitled to be promoted. After the screening is completed, they are entitled to send the names of fifteen persons. They have done so. Hence, we find no infraction. Therefore, such a contention cannot be accepted.

10. The second ground urged by the petitioner's counsel, is that grant of 50% of weightage or 50% marks for the purpose of interview, is incorrect.That the manner in which marks should be allocated is governed by the Indian Administrative Service (Appointment of Selection) Regulations, 1997. Clauses B.1 and B.2 of the selection procedure, would indicate that the Selection Committee for selection of Non-SCS Officers for the appointment to the I.A.S., shall distribute the marks between the assessment of service records and personal interview as follows:

I. Out of maximum 100 marks, the weightage for each of the two components be given as follows:

(i)	***Service records with particular reference to ACRS for the five preceding years***	***50 % weightage or 50 marks***
(ii)	*Personal Interview*	*50 % weightage or 50 marks*
Total		*100 marks*

II. There is no need to assign separate marks for bio-data. However, bio-data/Curriculum Vitae may be kept in consideration while assessing the overall personality of the candidate during the interview.

(vide commission's decision dated 08th January, 1999)

B.2 While assigning marks to the ACRs of the eligible officers, the broad guidelines for the Promotion Regulations may be followed for the assessment of records. On the basis of the assessment of the individual ACRS, the Committee could assign 10 marks for " Outstanding ", 8 marks for " Very Good " and 6 marks for " Good " grading in the individual year (s) of assessment. "

10 (a).It is, therefore, contended that 50% marks have been allotted on the basis of the Confidential Reports (for short, ' the CRs ').The allocation of 50% marks for the purpose of interview, would not lead to the desired result. That the suitability of the candidates should be assessed on they possessing outstanding merit and

ability. Therefore, grant of 50% marks to the interview, would be unjust.In support of his case, he relies on the following judgments:

(1985) 4 SCC 417-ASHOK KUMAR YADAV v. STATE OF HARYANA,

(1991) 1 SCC 662-MOHINDER SAIN GARG v. STATE OF PUNJAB, &

(2011) 6 SCC 605-DIRECTOR GENERAL, ICAR AND OTHERS v. D. SUNDARA RAJU

Therefore, it is pleaded that 50% allocation for the interview has been held to be unjustified and therefore, the procedure adopted by the Selection Committee, would be arbitrary and contrary to the settled legal principles.

10 (b).On the other hand, the learned counsel for the respondents ' disputes the same. They contend that the question of challenging 50% of weightage for the interview cannot be questioned by the petitioner. That no new procedure has been adopted by the respondents. They are governed by the 1997 Regulations. Ever since then, the Regulations have been followed in every such selection process. Moreover, the petitioner, having participated in the selection process, cannot challenge the very process, which he did not question, while attending the interview.In support whereof, the respondents ' counsel relies on the following judgments:

AIR 1997 SC 2083 UNIVERSITY OF COCHIN v. N.S. KANJOONJAMMA,

(2008) 4 SCC 171-DHANANJAYA MALIK v. STATE OF UTTARANCHAL,

(2006) 6 SCC 395-K.H. SIRAJ v. HIGH COURT OF KERALA, &

(1995) 3 SCC 486-MADAN LAL v. STATE OF JAMMU & KASHMIR.

10 (c).Heard learned counsels and considered the aforesaid judgments. In the case of ASHOK KUMAR YADAV v. STATE OF HARYANA, reported in (1985) 4 SCC 417, it was held in paragraph No.26 that when 33.3% marks is held in the case of Ex-service Officers and 22.2% in the case of other candidates for the viva voce, the selection process can be considered to be arbitrary. The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test would tend to become a determining factor in the selection process. Therefore, even if a candidate secured the highest marks in the written examination, he could be easily knocked out of the race by awarding him the lowest marks in the interview. Further, in paragraph No.29 of the judgment, the Hon'ble Supreme Court held that the percentage of marks allocated for the viva voce test by the Union Public Service Commission in the case of selection to the Indian Administrative Services and other allied services is 12.2 and that has been found to be fair and just. Therefore, striking a proper balance between the written examination and viva voce test is necessary. Based on that, certain directions were issued, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2%.However, so far as the instant case is concerned, it is a matter pertaining to Selection of Non-State Civil

Services Officers to the Indian Administrative Service. In pursuant whereof, the Hon'ble Supreme Court have categorically held that grant of 50% marks for the personal interview is a fair assessment of the candidate and cannot be interfered with, as held in the case of M.V. THIMMAIAH AND OTHERS v. UNION PUBLIC SERVICE COMMISSION AND OTHERS, reported in (2008) 2 SCC119.

10 (d).Furthermore, the Hon'ble Supreme Court having considered the judgments on the issue with regard to grant of 50% marks for the interview, in the case of UNIVERSITY OF COCHIN v. N.S. KANJOONJAMMA, reported in AIR 1997 SC 2083 and in the case of K.H. SIRAJ v. HIGH COURT OF KERALA, reported in (2006) 6 SCC 395, it was held that the petitioners having participated in the interview, it is not open for them to challenge the very process under which they subjected themselves. Even in so far as merit is concerned, in view of the judgment in THIMMAIAH AND OTHERS v. UNION PUBLIC SERVICE COMMISSION AND OTHERS, reported in (2008) 2 SCC 119, and ANZAR AHMAD v. STATE OF BIHAR AND OTHERS, reported in (1994) 1 SCC 150, the position of law is quite clear. The consideration of 50% marks for the purpose of the interview by the I.A.S. Selection Committee has been upheld by the Hon'ble Supreme Court in the aforesaid judgments. Therefore, we do not find any reason to take a different view as canvassed by the learned counsel for the petitioner. The Tribunal was justified in coming to the conclusion that 50% of marks awarded for the purpose of interview, cannot be interfered with, in view of the aforesaid judgments of the Hon'ble Supreme Court.

11. The next ground urged by the learned counsel is based on the procedure for appointment of Non-SCS Officers in terms of IAS (Appointment by Selection) Regulations, 1997. Therein, it has been narrated in paragraph B.2 that while assigning marks to the ACRs of the eligible officers, the Committee could assign 10 marks for ' outstanding ', 8 marks for ' Very Good ', and 6 marks for ' Good ' in the individual year (s) of assessment. By considering the ACRs of all the three candidates, the same would indicate that a number of outstanding procured by the petitioner is far more than that of the other two candidates. We have considered the concerned chart, which has been produced as an Annexure along with the proceedings of the meeting of the Screening Committee. The ACRs of the previous years have been corroborated therein. We are presently concerned with so far as the petitioner, respondent Nos.5, 12 and 13. So far as the petitioner and respondent No.5 are concerned, they have secured outstanding in all the previous five years. So far as respondent No.12 is concerned, he has secured very good for the year 2004-05.So far as respondent No.13 is concerned, he has secured very good for the years 2004-05 and 2005-06.Therefore, if the marks as suggested in the IAS Regulations have to be followed, the petitioner and respondent No.5 would secure the highest marks. Therefore, the non-selection of the petitioner is unjust. The same is countered by the learned counsel for the respondent U.P.S.C. He contends that the consideration of ACRS is only a guideline. That the Selection Committee is not expected to look at the ACRS in a mathematical manner. The ACRS have to be considered and thereafter, each of the candidates have to be weighed. There are circumstances, wherein the candidates with outstanding merit have been downgraded and a number of cases where ordinary candidates have been upgraded. It is, therefore, for the Selection Committee to independently consider the merits of each one of the candidates and thereafter, to grant them the relevant marks based on their CRs. To this extent, reliance is

placed on the judgment of THIMMAIAH's case, with reference to paragraph Nos. 35 to 38 to contend that the duty and discretion of the Selection Committee cannot be circumscribed by a mere application of the CRs.

12. On hearing learned counsels, we are of the view that so far as the question of interpreting the CRS are concerned, it is exclusively within the discretion of the Selection Committee to do so. The Selection Committee is not necessarily bound by the ACRs. The markings in the ACRS are only indicative. It does not preclude the Selection Committee coming to a conclusion other than what is reflected in the ACRs. They are entitled to a re-appreciation. In fact, the Hon'ble Supreme Court in the aforesaid judgment has categorically stated the very issue on hand. Therein, the Hon'ble Supreme Court held that the Court would not normally sit as a Court of appeal to assess the ACRs, or the Tribunal to be given such a power over the statutory Selection Committee. The guidelines prescribe as to how the ACRs have to be assessed in the process of making such an assessment. The views of the State government are obtained and thereafter, ACRS are scrutinised and a selection list is to be prepared. The assessment made by the Selection Committee cannot be subject to scrutiny, unless it is actuated by malafide. It was further held that the earlier judgment of the Hon'ble Supreme Court in the case of RAMANAND PRASAD SINGH AND ANOTHER v. UNION OF INDIA AND OTHERS, reported in (1996) 4 SCC 64, was re affirmed, wherein it was held that the Committee should apply its mind to the service record and make its own assessment of the same and thereafter, mark the candidates as ' outstanding ', ' very good ' and ' good ' and SO on. Therefore, it does not necessarily mean that the Selection. Committee should adopt the same grading which is given by the Reporting or Reviewing Officer.

13. The view of the Hon'ble Supreme Court in the case of UPSC V. K. RAJAIAH AND OTHERS, reported in (2005) 10 SCC 15, was also re-affirmed. Therein, it was held that the Court should not have faulted the so called down gradation of the first respondent for one of the years. That the power to classify the candidates as ' outstanding ', ' very good ', ' good ' and ' unfit ' is vested with the Selection Committee. That is a function incidental to the selection process. The classification made by the State Government in the ACRS is not binding on the Committee. Even though the Committee is guided by the classification adopted by the State Government but, for good reasons, the Selection. Committee can evolve its own classification which could be at variance with the gradation given in the ACRs.

14. It is the duty and responsibility of the Selection Committee to make an individual assessment of the marks and thereafter, to grade the candidates based on such an independent evaluation. Even though they are guided by the ACRs, they are not bound by the same. Hence, such a contention cannot be accepted.

15. Yet another ground that is canvassed herein is that, the marks allotted to the candidates based on the ACRs have been equated by the Selection Committee. That even though each one of the candidates secured different grading for different years, all of them have been allotted 40% of the marks for the said purpose. The same is objected by the learned counsel for the respondent-U.P.S.C. on the ground that such a contention was not taken by the petitioner before the Tribunal. Therefore, they did not have an opportunity to counter the same. Therefore, we went through the pleadings of the petitioner before the Tribunal. We do not find

anything in the original application. An amended application was filed and it was subsequently allowed by the Tribunal. That, too, has been produced before this Court.

16. On considering the contentions, we do not find that such a contention was either taken or seriously contended by the petitioner before the Tribunal. It is for this reason that the U.P.S.C. was not in a position to counter such a claim. To this effect what has been pleaded at paragraph No. (h) to the additional amended pleading, that was allowed by the Tribunal, is as follows:

h) Though the majority of the Selection Committee members (who happened to have actual knowledge of the candidates) had accepted the gradings given to the Applicant as ' outstanding ' in all the 8 years of service records/ACRs, the minority members prevailed on these majority and the gradings have been toned for no reasons whatsoever and all the 15 candidates have been made equal, irrationally. The un-constitutional procedure of heavy weightage of 50% prescribed to the viva-voce has been used to oust the top merited candidates including the Applicant. The entire process of selection has been vitiated due to abuse and due to the adopting of the unconstitutional procedure. Hence, the Notification dt.08.09.2011 at Annexure:A-14 is unsustainable in law. "

17. A reading of the above paragraph clearly indicates that the focus of the contention of the petitioner was purely and simply based on 50% marks for the interview. What has been stated therein with regard to equation, is only a matter of fact which does not constitute any ground at all. Therein, it is merely stated that there was a dispute between the majority and the minority of the Selection Committee Members and what prevailed was the minority. It is stated that the majority of the Selection Committee Members had accepted the grading given to the applicants, whereas the minority prevailed upon the majority and the grading have been turned down. Thus, we find that it is a statement of fact and cannot be considered as a ground. Even otherwise what is narrated by the petitioner is that the majority prevailed upon the minority. Therefore, we do not find that such a ground was taken. The question, whether the majority prevailed upon the minority, or the minority prevailed upon the majority are matters within the four corners of the Selection Committee. It is not for the Court to venture into the same, specifically when such a contention was not taken.

18. Learned counsel for the petitioner persists and holds that such a contention was considered by the Tribunal. Learned counsel for the petitioner, therefore, relies on paragraph No.22 of the order of the Tribunal, wherein a reference has been made with regard to the grant of 40 marks to all the fifteen short-listed candidates. The Tribunal, subsequently, held at paragraph No.26 that they do not find fault with the Members of the Selection Committee agreeing to grant 40 marks to all the candidates.

19. Learned counsel for the respondent, on the other hand, would point out that the Tribunal in paragraph No.22 of its order clearly held that the Selection Committee having considered the entire CRs of all the candidates, have rightly assessed it.

20. On hearing learned counsels, we do not find that such a contention was seriously taken or contested by the petitioner. Even though, there is stray reference made in paragraph No. (h) to the additional ground urged by the petitioner, that was not the backbone of the contention of the petitioner before the Tribunal. Therefore, the U.P.S.C. did not have an opportunity to meet it. Even with reference to paragraph No.22 of the order of the Tribunal, it does not reflect the same. As we understand, the contentions of the petitioner really emanates from the grant of marks by the U.P.S.C. which according to them, runs contrary to the guidelines of granting particular marks to the particular classification made by the State that is ' outstanding ', ' very good ', ' good ', etc. should be given different marks. Therefore, all candidates should not be equated with the same amount of merit. We are of the considered view that such a contention was neither taken, nor decided before the Tribunal. Even otherwise, even if such a contention is appreciated by us, it falls squarely within the case of Thimmaiah. The question of granting particular marks for the particular classification of the candidate is not binding on the Committee. Even though gradations have been made by the State, the Tribunal has a duty and responsibility to individually assess the candidate and thereafter, accord marks.

21. On considering the ACRs of each one of the candidates, they have thought it fit to equate all the candidates since in their considered view, each one of the candidates were of equal standing. Therefore, each one of the candidates have been accorded 40% marks. When there are no malafides alleged against the Committee, the contention of a wrong grant of equal marks to all the candidates, therefore, cannot be accepted. It is since well covered by the judgment in Thimmaiah's case, wherein the assessment made by the Selection Committee could not be subject to judicial review, until there are malafides alleged against the Committee. Admittedly, they are no malafides alleged against the Committee which would enable us to go into the said process. Therefore, even if such a contention is to be accepted, the gradation for each one of the candidates falls within the jurisdiction of the Committee to reassess and grant marks to each one of the candidates.

22. The next contention urged by the learned counsel for the petitioner is that, even the Tribunal was very unhappy with the manner in which 50% marks have been awarded in the interview. He, therefore, relies on paragraph No.49 of the Tribunal order. Therein, the Tribunal was of the view that it would perhaps be better to allocate same weightage to the interview as the weightage given in the main I.A.S. appointments. Such a weightage being granted is bad in law.

23. We have considered the view of the Tribunal. All that we can say is that the Tribunal is entitled to express their view. However, their view has not been translated into accepting the contentions of the petitioner and to consequently strike down the Selection. In fact, the Tribunal has upheld the selection. It is not necessary for us either to accept such an opinion or not.

24. Learned counsel for the contesting respondent submits at the Bar that subsequently the petitioner has since been selected and appointed as an I.A.S Officer in the year 2014 and therefore, the question of resetting

the clock would be inappropriate. However, we are of the view that, whether they were subsequently selected or not, is not germane, for consideration of the impugned order herein.

25. Under these circumstances, we find no good ground to interfere with the order passed by the Tribunal. The order of the Tribunal is based on the facts and circumstances of the case and by following the principles enunciated by the Hon'ble Supreme Court. We do not find any perversity that calls for any interference. Consequently, the petition, being devoid of merit, is dismissed.